(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. 01-_____

In The

Supreme Court of the United States

Kingsley Mawhirt Pro-Se Petitioner

v.

ASHRAF NABIL AHMED, M.D., personally, MARSHA TANENBERG KARANT, M.D. , personally, HORATIO PREVAL, M.D. , YAKOV GREENSTEIN, M.D., personally, JOHN DOE, M.D., personally, JOE ROE, M.D., personally, POLICE OFFICER GONZALEZ, personally, Badge #3973, POLICE OFFICER ROMAGNOLI, personally, Badge # 4386, ROBERT DYE ESQ., personally, LEA IRION, R.N., personally, BARBARA MAWHIRT, personally

On petition For Writ Of Certiorari

To The U.S. Court of Appeals Second Circuit

Kingsley Mawhirt
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31pp

QUESTIONS PRESENTED FOR REVIEW

1. Can a Suffolk County, New York police officer, arrest, take into custody, handcuff, and transport a United States citizen over the age of 21 on an involuntary basis to a New York State hospital psychiatric unit (Stony Brook University hospital) when; that citizen has not committed any crime whatsoever, has no outstanding Warrants of any kind, is not a danger to himself / herself or others, has not threatened anyone in any manner whatsoever, the citizen did not posses a weapon or any dangerous item, there is no Court Order or Proceeding to take the citizen into custody, there is no probable cause to take the citizen into custody, there is no legal reason to take the citizen into custody, and there is no complainant?

2. Can a Suffolk County, New York police officer, arrest, take into custody, handcuff, and transport a United States citizen over the age of 21 on an involuntary basis to a New York State hospital psychiatric unit (Stony Brook University hospital) when; that citizen has not committed any crime whatsoever, has no outstanding Warrants of any kind, is not a danger to himself / herself or others, has not threatened anyone in any manner whatsoever, the citizen did not posses a weapon or any dangerous item, there is no Court Order or Proceeding to take the citizen into custody, there is no probable cause to take the citizen into custody, there is no legal reason to take the citizen into custody, and there is no complainant; solely because that citizen is complying with the law by personally filing criminal complaints at the appropriate local police precinct which has the legal authority and jurisdiction to accept criminal complaints of unlawful

imprisonment, insurance fraud, perjured information on New York State hospital records, and a perjured / forged "Application for Involuntary Admission" / "Certificate of Examination" for an illegal involuntary admission to a New York State hospital psychiatric unit (Stony Brook University hospital) that occurred 4 months prior?

3. When is a Suffolk County, New York police officer allowed by U.S. District Court and the U.S. Court of Appeals to commit perjury beyond a reasonable doubt in a Federal Civil lawsuit, based on telephone records, 911 tape recordings, Suffolk County Police Department records, and Court depositions in an effort to establish probable cause for an arrest whereby; there was no legal basis for the Suffolk County police officer to take a United States citizen over the age of 21 into custody, no complainant, and no probable cause an for an arrest?

4. When can a United States citizen over the age of 21 be involuntarily committed to a New York State hospital psychiatric unit (Stony Brook University hospital) based on a perjured / forged "Certificate of Examination" and perjured / forged "Application for Involuntary Admission"?

5. Can a United States citizen over the age of 21 be involuntarily committed to a New York State hospital psychiatric unit (Stony Brook University hospital) without any examination, either physical or psychological, and no verbal communication whatsoever with the admitting doctor (Horatio Preval), who then signs a perjured / forged

"Certificate of Examination" and a perjured / forged "Application for Involuntary Admission?

6. When can a United States citizen over the age of 21 who is not a danger to himself / herself, has not threatened anyone, has no outstanding civil or criminal Warrants, has no outstanding Court proceeding or Court order for an involuntary commitment, and did not posses any dangerous item or weapon; be involuntarily committed to a New York State hospital psychiatric unit (Stony Brook University hospital) based on a perjured / forged "Certification of Examination" and an "Application for Involuntary Admission" (Yakov Greenstein / Marsha Karant) without a psychiatric evaluation or examination by any doctor whatsoever?

7. Can a doctor working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) incarcerate a United States citizen over the age of 21 when; there is no Court Order or Proceeding to take the citizen into custody, that citizen takes care of their own needs, has not committed any crime whatsoever, has no outstanding Warrants of any kind, is not a danger to himself / herself or others, did not posses any dangerous item or weapon, has not threatened anyone in any manner whatsoever, and there is no legal reason to take the citizen into custody?

8. Can a doctor working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) illegally incarcerate a United States

citizen over the age of 21 who; has not committed any crime whatsoever, did not posses any dangerous item or weapon, has no outstanding Warrants of any kind, is not a danger to himself / herself or others, has not threatened anyone in any manner whatsoever, there is no Court Order or Proceeding to take the citizen into custody, takes care of their own needs, there is no legal reason to take the citizen into custody, and the citizen takes care of their own needs; by deliberately and maliciously attempting to document a case against the incarcerated citizen to substantiate the illegal involuntary incarceration with fictitious, perjured, and forged medical information / hospital records?

9. When is a doctor working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) allowed to submit perjured information on a New York State Supreme Court application for "Treatment Over Objection" to forcibly inject a United States citizen over the age of 21 with dangerous, potentially lethal chemicals that cause permanent neurological damage?

10. When is a doctor (Ashraf Nabil Ahmed) working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) allowed to coerce an incarcerated United States citizen over the age of 21 by offering to restore the citizen's freedom, liberty, and United States Constitutional rights in exchange for the citizen ingesting dangerous, potentially lethal chemicals that cause permanent neurological damage?

11. Can a doctor working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) file a Court application for "Treatment Over Objection" in New York State Supreme Court for approval to use hypodermic syringe needle injections of dangerous, potentially lethal chemicals that cause permanent neurological damage into an involuntarily incarcerated United States citizen when; that citizen has not committed any crime whatsoever, did not posses any dangerous item or weapon, has no outstanding Warrants of any kind, is not a danger to himself / herself or others, has not threatened anyone in any manner whatsoever and takes care of their own needs?

12. Can a doctor working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital), file a New York State Supreme Court application for "Treatment Over Objection" to forcefully inject an incarcerated United States citizen over the age of 21 with dangerous, potentially lethal chemicals without conducting the prerequisite medical examination / screening to rule out the risk factors associated with the injection / ingestion of those lethal chemicals named in the New York State Supreme Court application such as death and permanent neurological damage?

13. If a doctor working as a New York State employee at a New York State hospital psychiatric unit testifies at a New York State Supreme Court hearing for "Treatment Over Objection" that an involuntarily incarcerated United States citizen over the age of 21 is not a danger to themselves or others, takes care of their own needs, and has not threatened

anyone, should that citizen be released from the hospital incarceration?

14. If a doctor working as a New York State employee at a New York State hospital psychiatric unit testifies at a New York State Supreme Court hearing for "Treatment Over Objection" that an involuntarily incarcerated United States citizen over the age of 21 is not a danger to themselves or others, takes care of their own needs, and has not threatened anyone, can that citizen be involuntarily injected with dangerous, potentially lethal chemicals that cause permanent neurological damage?

15. Can doctors, nurses, and social workers acting as New York State employees at a New York State hospital psychiatric unit (Stony Brook University hospital), create and gain a legal advantage against a United States citizen over the age of 21 who stated the hospital staff would be named in a lawsuit for an illegal involuntary incarceration 4 months prior; by recommending, coercing, and influencing the citizen's spouse to obtain a New York State Family Court Order of Protection when that spouse had previously stated to the hospital psychiatric staff there was no need for an Order of Protection or police involvement?

16. Can doctors, nurses, and social workers acting as New York State employees at a New York State hospital psychiatric unit (Stony Brook University hospital), create and gain a legal advantage against a United States citizen over the age of 21 who stated the staff would be named in a lawsuit for an illegal involuntary incarceration 4 months prior; by

creating perjured and fictitious medical information on hospital medical records and producing perjured / forged medical records?

17. When can a doctor, who is a New York State employee (Stony Brook University hospital), violate a New York State Supreme Court Order, by deliberately and maliciously overdosing a United States citizen over the age of 21 with dangerous, life threatening, potentially lethal chemicals that cause permanent neurological damage, when that incarcerated citizen verbally notified the doctor that the overdose was illegal, and a violation of the New York State Supreme Court Order?

18. Can a R.N. (registered nurse) working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) attempt to forcibly medicate an involuntarily incarcerated United States citizen over the age of 21 who is refusing to ingest dangerous, potentially lethal drugs that cause permanent neurological damage; when there is no Court Order to forcibly medicate the U.S. citizen, the incarcerated citizen has previously notified the psychiatric unit hospital staff (doctors and nurses) that legal representation by an attorney and the patient rights advocate was immediately requested, the citizen is not a danger to himself / herself or others, has not threatened anyone, did not posses any dangerous items or weapons, and there are no outstanding Warrants?

19. Can a spouse who is a New York State R.N. (registered nurse) attempt to forcibly medicate a husband /

wife with dangerous, potentially lethal chemicals that cause permanent neurological damage while that husband / wife is involuntarily incarcerated at a New York State hospital psychiatric unit (Stony Brook University hospital), when there is no Court Order to forcibly medicate the citizen, and the incarcerated citizen has previously notified the psychiatric unit hospital staff (doctors and nurses) that legal representation by an attorney and the patient rights advocate was immediately requested?

20. Can a R.N. (registered nurse) working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) deliberately overdose an involuntarily incarcerated United States citizen over the age of 21 with a hypodermic needle injection of dangerous, potentially lethal chemicals that cause permanent neurological damage, after the citizen verbally notified the nurse that the injection overdose was a violation of a New York State Supreme Court Order and the citizen is not a danger to themselves or others and has not threatened anyone in any manner whatsoever?

21. Can a R.N. (registered nurse) working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) threaten to have a United States citizen over the age of 21 physically restrained, when the citizen is not a danger to themselves or others and has not threatened anyone; solely because that citizen is refusing to be injected with a 200% overdose of dangerous, life threatening chemicals, which is a violation of a New York State Supreme Court Order?

22. If a United States citizen over the age of 21 is involuntarily incarcerated at a New York State hospital psychiatric unit (Stony Brook University hospital) and that citizen verbally notifies the assigned New York State attorney acting as counsel (Robert Dye), that a violation of a New York State Supreme Court Order occurred; whereby the incarcerated citizen was deliberately injected with a 200% overdose of dangerous, potentially lethal chemicals that cause permanent neurological damage, and the assigned New York State attorney (Robert Dye) does nothing to protect the citizen's legal rights, health, and safety; and the citizen is deliberately overdosed by 200% a second time, can that attorney be liable for ineffective legal representation and malpractice and is that attorney (Robert Dye) acting in the best interests of his / her employer which is New York State?

23. If doctors at a New York State hospital psychiatric unit (Stony Brook University hospital) sign and submit a New York State Court application for "Treatment Over Objection" in New York State Supreme Court to forcibly inject and medicate a United States citizen over the age of 21 who is incarcerated at a New York State hospital psychiatric unit (Stony Brook University hospital), and those doctors violate the "Treatment Over Objection" application which was granted by New York State Supreme Court by deliberately overdosing the incarcerated citizen with a hypodermic syringe needle injection containing a 200% overdose of dangerous, potentially lethal chemicals that cause permanent neurological damage; can those doctors be held liable?

24. If doctors at a New York State hospital psychiatric unit (Stony Brook University hospital) sign and submit a New York State Court application for "Treatment Over Objection" in New York State Supreme Court to forcibly inject and medicate a United States citizen over the age of 21 who is incarcerated at a New York State hospital psychiatric unit (Stony Brook University hospital), and those doctors violate the "Treatment Over Objection" application which was granted in New York State Supreme Court by deliberately overdosing the incarcerated citizen with a hypodermic syringe needle injection containing a 200% overdose of dangerous, potentially lethal chemicals that cause permanent neurological damage, and those doctors along with the hospital administration are verbally notified by the incarcerated citizen that a violation of the New York State Supreme Court Order occurred, and those doctors deliberately and maliciously re-prescribe and overdose the incarcerated citizen a second time with another 200% overdose, can the prescribing doctors, supervising doctors, psychiatric unit administrator, and the hospital administration be held liable?

25. If a United States citizen over the age of 21 is involuntarily incarcerated at a New York State hospital psychiatric unit (Stony Brook University hospital), and the citizen requests representation by an attorney, instructs the assigned attorney (who is a New York State employee) to have an independent psychiatric evaluation performed because without an expert witness the incarcerated citizen would automatically lose, and that assigned New York State attorney does not provide an expert witness as requested which results in a ruling to forcibly medicate the incarcerated citizen with dangerous, potentially lethal, chemicals that cause permanent neurological damage, can that attorney be

held liable for deliberately providing ineffective representation and legal malpractice?

26. If a United States citizen over the age of 21 is incarcerated at a New York State hospital psychiatric unit (Stony Brook University hospital) and loses at a New York State Supreme Court hearing for "Treatment Over Objection" which results in the forced hypodermic needle injection of dangerous, potentially lethal chemicals that cause permanent neurological damage; and the incarcerated citizen instructs the assigned New York State attorney (Robert Dye) to appeal the decision to a higher Court, and that assigned New York State attorney ignores and disregards the verbal instruction by the incarcerated citizen, has that assigned New York State attorney provided ineffective legal representation and legal malpractice to the incarcerated citizen?

27. If a United States citizen over the age of 21 is incarcerated at a New York State hospital psychiatric unit (Stony Brook University hospital) and loses at a New York State Supreme Court hearing for "Treatment Over Objection" which results in the forced hypodermic needle injection of dangerous, potentially lethal chemicals that cause permanent neurological damage; and the incarcerated citizen instructs the assigned New York State attorney (Robert Dye) to appeal the decision to a higher Court, and that assigned New York State attorney ignores and disregards the verbal instruction by the incarcerated citizen, has that assigned New York State attorney provided ineffective legal representation and legal malpractice to the incarcerated citizen and thereby benefited the assigned attorney's employer which is New York State?

28. Can a social worker (Helen Conover) working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) release confidential patient information to the spouse of an involuntarily incarcerated United States citizen over the age of 21; with the full knowledge the spouse and the incarcerated husband / wife are engaged in an adversarial Family Court proceeding because the social worker (Helen Conover) was responsible for convincing the spouse to change his / her decision and obtain a New York State Family Court Temporary Order of Protection?

29. Can a social worker (Helen Conover) working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) deliberately and maliciously divulge both the date and time, and encourage the spouse of an involuntarily incarcerated husband / wife to attend a New York State Supreme Court hearing for "Treatment Over Objection" with the full knowledge that a "Temporary Stay Away Order of Protection" has been issued from New York State Family Court against one of the spouses, and there are pending adversarial legal proceedings in New York State Family Court and a pending matrimonial proceeding in New York State Supreme Court?

30. Can doctors working as New York State employees at a New York State hospital psychiatric unit (Stony Brook University hospital) work simultaneously as both a New York State employee in a New York State hospital with the protection of the New York State Attorney General's Office,

and as a private corporation owner / employee / entrepreneur / private contractor (S.B. Associates) that earns a profit / kickbacks / perks; based on the number of citizens incarcerated at the New York State hospital psychiatric unit, the length of the incarceration, kickbacks / perks from pharmaceutical companies based on the type and quantity of pharmaceutical chemicals prescribed, and from applications to New York State Supreme Court for "Treatment Over Objection" which increase the duration of an incarceration?

31. Can a doctor (Ashraf Nabil Ahmed) working as a New York State employee at a New York State hospital psychiatric unit (Stony Brook University hospital) discuss the medical and legal status of an involuntarily incarcerated United States citizen over the age of 21 with a divorce attorney who has been retained to work against the incarcerated citizen and has already filed a matrimonial action in New York State Supreme Court 3 months prior on behalf of the incarcerated citizen's spouse who is seeking a divorce?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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APPENDIX A Decision from the U.S. Court of Appeals for the 2nd Circuit (i)

TABLE OF AUTHORITIES CITED

CASES

As a Pro-Se plaintiff, I do not have the legal resources to cite specific examples of case law. However, the facts and proof of both criminal and civil violations of the applicable laws are clearly defined throughout the pleadings of this Civil Action with supporting evidence and documentation.

This Civil action is not about case law. The issues are New York State doctors who are not complying with the law, the illegal incarceration of citizens for profit, New York State hospital profitability, New York State corruption, Suffolk County police corruption, perjury, forgery, assault with illegal chemical injections, forced medication, criminal misconduct, violations of the law, Judicial decisions that ignore the facts and circumstances, deliberately ineffective legal malpractice, injustice, and Government protecting Government.

The case law cited by the defendants in this Civil action is not applicable per the facts and my Court pleadings. The case law presented by the defendants is an attempt to evade criminal and civil wrongdoing in a smoke and mirrors, slight of hand, disregard the actual evidence and documentation in this Pro-Se Civil action. Citing cases, as presented in the defendant's answers, should not be used as a method to avoid both criminal and civil wrongdoing and obscure the evidence, facts, and truth.

STATUTES AND RULES

Federal statutes and rules: 42 U.S.C. §1983
(i)28 U.S.C. §1331
28 U.S.C. §d1391(b)

New York State Mental Hygiene Law: Section 9.37
Section 9.37(a)
Section 9.39

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully requests that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix "A" to this petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the 2nd Circuit decided my case was May 17th 2001.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Per the "Jurisdiction and Venue" section of this Civil Action's "First Amended Complaint – Civ. 96-4773 (ADS)" filed on or about January 16, 1997, Federal Law (i) 28 U.S.C. §1331 authorizes jurisdiction in U.S. District Courts of Civil Actions arising under the U.S. Constitution, Laws, and Treaties of the United States.

Venue for this Civil Rights Action which arose in Suffolk County, New York is in U.S. District Court, Eastern District of New York pursuant to 28 U.S.C. §1391(b).

Additional Constitutional and Statutory Provisions listed in the "First Amended Complaint – Civ. 96-4773" are the involuntary incarceration of the Pro-Se Plaintiff on an emergency basis pursuant to New York Mental Hygiene Law ("MHL") §9.37, §9.37(a), and §9.39.

This Civil Action for an illegal involuntary incarceration also includes Criminal Acts under New York State Law that the Suffolk County police department and the New York State Attorney General refused to investigate and prosecute. The felonies and misdemeanor crimes are stated in this Civil Action with supporting information and documents.

The Criminal misconduct includes forged / perjured documents / hospital records, insurance fraud, coercion, and assaults with illegal chemical injections.

Per the "First Amended Complaint – Civ. 96-4773", the false arrest, unlawful imprisonment, illegal involuntary incarcerations, illegal chemical injections, forced medications, coercion, and deliberately ineffective legal malpractice / misconduct, violated the Pro-Se plaintiff's right to procedural due process of law under the Fourteenth Amendment to the United States Constitution and further violated 42 U.S.C. §1983.

STATEMENT OF THE CASE

This Civil Rights action arises out of the Pro-Se plaintiff, Kingsley Mawhirt's, wrongful confinement at New York State University Hospital Stony Brook (UHSB).

Because of two erroneous involuntary incarcerations at UHSB, the Pro-Se plaintiff seeks compensatory and punitive damages against the physicians who illegally incarcerated him in their personal capacities, against the physicians, nurses, and plaintiffs former wife, who forcibly medicated and overdosed the plaintiff against his will, against the police officers who arrested him, in their personal capacities, against the hospital administration that ignored his complaints of forced medications which includes illegal chemical injections, in their personal capacities, against social worker Helen Conover who released confidential patient information, in her personal capacity, and against Robert Dye, Esq., the assigned New York State attorney who represented him in his New York State Supreme Court hearing related to his involuntary incarceration.

REASONS FOR GRANTING THE WRIT

The lower Courts completely disregarded and ignored the factual documentation and evidence of Government corruption, unlawful imprisonment, perjury by the Suffolk County police officer defendants, perjury and forgery by the other defendants, perjured / forged Stony Brook University hospital records, Suffolk County police department 911 tape recordings, Suffolk County police department records, telephone records, an unjust ruling by New York State Supreme Court, deliberately ineffective legal malpractice by a New York State appointed attorney who is an employee of New York State, Government protecting Government, abuse of authority, coercion, assault with potentially lethal illegal chemical injections, and the incarceration of citizens for profit by doctors at Stony Brook University hospital who have the protection of the New York State Attorney General's office to protect them from criminal and civil investigations and prosecution as presented in my Court pleadings.

I am requesting the United States Supreme Court to review my current and prior Court pleadings and the evidence / documentation presented.

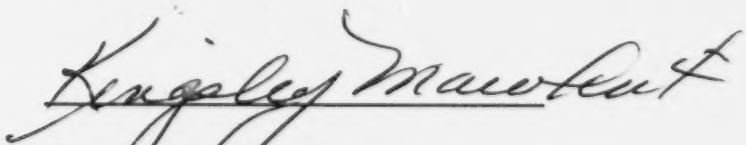
CONCLUSION

Wherefore, the Pro-Se plaintiff requests the following relief:

(a) A jury trial
(b) Compensatory damages in an amount to be determined at trial
(c) Punitive damages in an amount to be determined at trial
(d) Injunctive relief directing the expungement of hospital records
(e) The cost of Attorney's fees pursuant to 42 U.S.C. §1988
(f) Costs and disbursements
(g) Any other relief that this Court deems just and proper

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: August 14, 2001

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR THE PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of May, two thousand one.

PRESENT: HON. JAMES L. OAKES
HON. RALPH K. WINTER
HON. CHESTER J. STRAUB

Circuit Judges

KINGSLEY MAWHIRT,

Plaintiff-Appellant,

SUMMARY ORDER
No. 00-7312

v.

ASHRAF NABIL AHMED, M.D.; MARSHA TANENBERG KARANT, M.D., personally; HORACIO PREVAL, M.D., personally; JOHN DOE, M.D.; personally, ROE DOE, M.D., personally; PO GONZALEZ, personally Badge #3973; PO ROMAGNOLI, personally Badge #4385; ROBERT DYE, personally; YAKOV GREENSTEIN, M.D., personally; LEA IRION, RN; BARBARA MAWHIRT,

Defendants-Appellees,

Appearing for Appellant: Kingsley Mawhirt, pro-se, Holtsville, NY.

Appearing for the Appellees: Marion R. Buchbinder, New York; Robert K. Drinan, Mineola, NY; Arlene S. Zwilling, Hauppauge, NY; James O'Neil, Nesconset, NY.

Appeal from the United States District Court for the Eastern District of New York (Arthur D. Spatt, Judge).

AFTER SUBMISSION AND UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment of the District

Court is hereby AFFIRMED IN PART and VACATED AND REMANDED IN PART.

Kingsley Mawhirt, pro-se, appeals from a judgment of the United States District Court for the Eastern District of New York (Arthur D. Spat, Judge) granting summary judgment to Dr. Ashraf Nabil Ahmed, Dr. Marsha Tanenberg Karant, Dr. Horacio Preval, two unidentified doctors, attorney Robert Dye, Dr. Yakov Greenstein, and Registered Nurse Lea Irion (collectively "the State defendants"); Suffolk County Police Officers Gonzalez and Romagnoli ("the officers"); and his ex-wife, Barbara Mawhirt, on claims alleging deprivation of his constitutional rights and violations of state tort law resulting from his involuntary hospitalization at University Hospital Stony Brook ("UHSB") in June and October 1995.

On appeal, Mawhirt principally contends that the District Court erred by disregarding the contested issues of material fact raised in his papers in opposition to the defendants-appellees' motions. He also attaches a January 1996 "Summary of Forensic Psychological Evaluation" by Dr. Alan Klein, which concludes that "at the time of this evaluation", [Mawhirt] did not evidence diagnostic indicators of the disorder of Paranoid Schizophrenia," and finds "no indication that Mr. Kingsley Mawhirt constitutes a danger to himself or others."

On review of a grant of summary judgment, this Court determines de novo whether there is a genuine issue of material fact and if the moving party is entitled to judgment as a matter of law. See Scaria v. Rubin, 117 F. 3d 652,653 (2d Cir. 1997).

The District Court properly granted summary judgment to the defendants-appellees on Mawhirt's federal constitutional claims, false imprisonment claim against the officers, and assault and battery claims against Barbara Mawhirt. As the District Court noted, the involuntary civil commitments did

implicate Mawhirt's liberty interests as protected under the Due Process Clause. See Vitek v. Jones, 445 U.S. 480, 491-92 (1980). However, while Mawhirt disputed the medical and judicial conclusions that supported the involuntary commitments in June and October 1995, he raised no genuine issue of material fact as to whether he had been afforded procedural due process under the New York Mental Hygiene Law. The officers also did not violate Mawhirt's procedural due process rights when they transported him to UHSB in October 1995 because he was not entitled to a hearing before being taken to a hospital or psychiatric emergency program. See N.Y. Mental Hyg. Law §9.41 (McKinney 1999).

The State defendants were entitled to qualified immunity with respect to the substantive due process claims. See Doe v. Marsh, 105 F.3d 106, 109-10 (2d Cir. 1977). The record demonstrates that it was "objectively reasonable" for the medical personnel to believe that their participation in Mawhirt's involuntary commitments was lawful at the time of the conduct. See Glass v. Mayas, 984 F.2d 55,57 (2d Cir. 1993). Additionally, Mawhirt adduced no evidence rebutting the showings by the defendants-appellees that Mawhirt was a substantial danger to himself and to his family or establishing that any of the medical decisions constituted "a substantial departure from accepted judgment, practice, or standards." Kulak v. City of New York, 88 F.3d 63,75 (2d Cir. 1996) (internal quotation marks omitted).

The substantive due process claim against the officers arising from their October 1995 seizure of Mawhirt was properly construed as a claim under the Fourth Amendment. See Albright v. Oliver, 510 U.S. 266, 273-74 (1994); Glass, 984 F.2d at 58. However, the officers were entitled to qualified immunity because they acted reasonably and did not violate any of Mawhirt's clearly established rights when bringing him to UHSB.

The false imprisonment claims against the officers were properly dismissed because Mawhirt had not filed a notice of claim. See N.Y. Gen. Mun. Law §50-m(3)(McKinney 2000).

Mawhirt also failed to state a claim of ineffective assistance of counsel claim against Dye because, as a court appointed attorney representing Mawhirt in a state court commitment hearing, Dye was not acting "under color of state law" and thus is not subject to suit under 42 U.S.C. §1983. See Rodriguez v. Weprin, 116 F.3d 62, 65-66 (2d Cir. 1997). Moreover, the District Court properly declined to exercise supplemental jurisdiction over the state law assault and battery claims against Barbara Mawhirt. See Travelers Ins. Co. v. Keeling, 996 F.2d 1485,1490(2d Cir. 1993).

However, the District Court inappropriately dismissed the state law false imprisonment, assault, battery, and informed consent claims against the State defendants, concluding that all of these claims were barred from qualified immunity. Qualified immunity, to the extent it is asserted in connection with §1983 actions, is available only to public officials who have allegedly violated an individual's federal statutory or constitutional rights. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Rodriguez v. Phillips, 66 F.3d470,475 (2d Cir. 1995). Because "a violation of state law is not cognizable under §1983, "Pollnow v. Glennon, 757 F.2d 496,501 (2d Cir. 1985), the federal law doctrine of qualified immunity does not apply to state law claims, such as those dismissed by the District Court.

Nonetheless, a district court should generally dismiss supplemental state law claims without prejudice where all federal law claims are eliminated before trial. See Travelers Ins. Co., 996 F.2d at 1490; 28 U.S.C. §1367(c)(3). Accordingly, the aforementioned state law claims should have been dismissed without prejudice.

Mawhirt's submission of Dr. Klein's psychological evaluation has no bearing on this appeal because it was not in evidence below and it does not address Mawhirt's condition when he was admitted to UHSB in June or October 1995.

For the reasons set forth above, we AFFIRM in part the judgment of the District Court. We VACATE the judgment in respect of the state law claims and REMAND the matter to

the District Court so it may dismiss the state law false imprisonment, assault, battery, and informed consent claims against the State defendants without prejudice.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK

"s/Lucille Carr" 5/17/01
BY: